THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

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WRIT PETITION No.19949 of 1996

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Dated :30-09-2005

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Between:

M.Shyam Sunder.

.. **PETITIONERS**

AND

A.P.State Electricity Board and another.

.. RESPONDENTS

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ORDER:

Questioning the action of the first respondent, in ordering de novo enquiry and that of the second respondent in refusing to keep the enquiry proceedings in abeyance till the disposal of the criminal cases in C.C.Nos.125, 126 and 132 of 1996 on the file of the IX Metropolitan Magistrate Court, Hyderabad, the present writ petition is filed.

Facts, to the extent necessary for this writ petition, are that the petitioner joined the services of the respondent Board in the year 1991 as a Junior Accounts Officer. While working in the pay and accounts Section at Hyderabad, he was kept under suspension pending enquiry by order dated 29-11-1994. One Sri M.V.Krishna Rao was appointed as an Enquiry Officer on 20-12-1994 and thereafter another enquiry officer by name Sri M.V.S.Birinchi was appointed in his place on 22-06-1995. The said Enquiry Officer issued charge-memo dated 11-12-1995 alleging that the petitioner had indulged in clandestine activities by abusing his official position and that a criminal complaint had been lodged on 26-10-1994 in this regard. An enquiry was conducted and, according to the petitioner, the Enquiry Officer submitted a final report on 22-01-1996. While eleven employees including the petitioner were initially placed under suspension, the other eleven were reinstated into service. However, the petitioner was not extended the same benefit and thus continued under suspension even thereafter. The petitioner's grievance is that he was also not given the benefit of revised pay scales. The C.B.C.I.D. filed charge-sheet, in C.C.Nos.125, 126 and 132 of 1996 under Sections 468, 471 and 420 read with 120-B of the Indian Penal Code, before the IX Metropolitan Magistrate, Hyderabad. A third Enquiry Officer was appointed, vide proceedings dated 04-06-1996, and the respondent Board cancelled the earlier enquiry report, vide its proceedings, dated 21-08-1996 and directed the said Enquiry Officer to conduct de novo enquiry.

It is the case of the petitioner that in the absence of any specific provision in the Rules, and merely on the ground that the earlier enquiry report had absolved the petitioner of having committed any act of mis-conduct, it is not open to the respondent to order an enquiry de-novo. A fresh charge-sheet was issued on 05-07-1996, to which, the petitioner submitted his explanation on 24-07-1996 requesting that he be furnished a copy of the earlier enquiry report. Despite the petitioner's specific representation, the second respondent, by order dated 07-09-1996, refused to keep the enquiry in abeyance and called upon the petitioner to participate in the

de novo enquiry. The petitioner would rely on ***P.J.SUNDERRAJAN*** v. ***UNIT TRUST OF INDIA*** and ***P.RAMA RAO*** v. ***A.P.STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION LIMITED*** to contend that it is not open to the disciplinary authority to order a de novo enquiry by another enquiry officer in the absence of a specific provision in the service rules in this regard.

Learned counsel for the petitioner would refer to the Rules governing employees of the respondent corporation, wherein Rule 4(b) clearly states that the competent authority is empowered to authorize any officer in class I or class II service, superior in rank to the employee, to initiate departmental proceedings, to hold enquiry against the employee, and on the findings of that enquiry officer, the competent authority may award punishment or otherwise give a decision. Learned counsel would submit that since the power of the competent authority to initiate the departmental proceedings and to hold enquiry is circumscribed by Rule 4(b), the decision to order de novo enquiry, not being prescribed in the Rules, is illegal and is liable to be set aside.

A counter affidavit is filed on behalf of the respondent, wherein, it is stated that the claim of one Sri Viswashanthi Engineering Company, for payment of an amount of Rs.8.04 lakhs was received on 10-10-1994 under LOA No.297 which was fed to the computer and the amount was released on 19-10-1994 by way of a crossed cheque. On 13-10-1994 another claim of M/s.I.O.C.Limited, for Rs.19.72 lakhs under the same L.O.A.No.297, dated 12-10-1994 was personally brought by an employee from KTPS and was presented to Pay and Accounts Section. When this LOA was presented to the computer it was rejected as payment was already made in respect of L.O.A.No.297. Investigation at KTPS revealed that the LOA 297 did not relate to Viswashanti Engineering Compnay and it was not genuine. On 26-10-1994, payment to Viswashanti Engineering Company was stopped by giving instructions

to the concerned Bank and on further enquiry into the matter it was noticed that some more L.O.As. which were not initiated by Kothagudem Thermal Power Station were fake. On 28-10-1994 a complaint was lodged with the police which was registered as Cr.No.569. All the earlier LOAs are said to have been scrutinized and it was found that some more fake L.O.A.s were presented earlier and payments were made against some of them. Besides Police complaints, enquiry being initiated by the vigilance wing of A.P.S.E.Board, the C.B.C.I.D. is also said to have started investigating into the matter. On the basis of the vigilance report some of the employees, including the petitioner, were suspended. It is stated that Sri M.V.Krishna Rao was appointed as a Member of the Board necessitating appointment of Sri M.V.S.Birinchi as an Enquiry Officer in his place. Sri M.V.Krishna Rao is said to have conducted an oral enquiry and submitted an interim report stating that the police enquiry and the final report of the C.B.C.I.D., may throw light on the complicity or otherwise in respect of each employee accused in the instant case. On the basis of the said interim report, the Additional D.G.P., C.B.C.I.D., was requested in letter dated 30-03-1996 to intimate the names of persons against whom criminal charges were framed. The Additional D.G.P. in his letter dated 14-05-1996 is said to have stated that the petitioner was the only accused in C.C.No.125 of 1990 instituted against him and that no charges were framed against the other employees of the Board. It is in such circumstances that the eleven employees, who were earlier appointed along with the petitioner, were reinstated into service. Sri M.V.S.Birinchi is said to have retired from service on 31-01-1996 and in his place Sri B.S.Peter is said to have been appointed an as Enquiry Officer to continue the enquiry taking into consideration the interim report of Sri M.V.S.Birinchi, since the earlier report did not come to a conclusion in the matter and since the then Enquiry Officer was of the opinion that C.B.C.I.D. report would throw light on the complicity in respect of each of the accused employees that the respondent board was justified in ordering de novo enquiry and since the appointment of Sri B.S.Peter, as an enquiry officer, was

objected to, another Enquiry Officer was appointed in his place.

In a catena of judgments including ***P.J.SUNDERRAJAN*** (1 supra) and ***P.RAMA RAO*** (2 supra) it has been held that unless the rules enable or empower de novo enquiry being conducted on the very same charges, for which an enquiry was conducted earlier, ordering de novo enquiry would not only be contrary to the rules but also without jurisdiction. The impugned order of the 2nd respondent in ordering de novo enquiry, in the absence of any such provision in the rules, is required to be set aside. From a perusal of the record, it is clear that the earlier Enquiry report, though not specifically styled as an interim report, had infact stated that the extent of responsibilities of each of the charge-sheeted employees could only be decided when the report of C.B.C.I.D. wing brought out their complicity and since the main records were still with CBCID and only limited records were provided to the Enquiry Officer, the enquiry would be limited to deal with lapses with reference to the official position of each Officer and his functions thereof. It is further stated in the said Enquiry report that this being a criminal case, a police enquiry can bring out the facts that the final enquiry report of CBCID could throw light on the complicity or otherwise in respect of each employee and action may be taken accordingly.

It is clear that the said Enquiry Officer was of the view that only the final report of the CBCID would throw light on the matter and guilt or otherwise of employees in the absence of the CBCID report and the main records lying with the CBCID, could not be determined in the enquiry conducted by him. The report submitted by the Enquiry Officer is clearly interim in nature. The guilt or otherwise of the employees concerned, with respect to the charges levelled against them, have not been determined by the enquiry officer nor he has recorded any findings with regards each of the charges specified in the charge-sheet. The Enquiry Report of Sri M.V.S.Biranchi, dated 16-12-1962, can, at best, be considered as an interim report.

In the absence of any specific provision in the service rules, while the competent authorities are precluded from initiating an enquiry de novo, it is always open for them, if they so desire, to continue the enquiry from the stage at which it was earlier left by the then Enquiry Officer. The decision of the first respondent in memo dated 21-08-1996, in setting aside the earlier enquiry report and in ordering de novo enquiry, is hereby set aside. As a result, the earlier enquiry, which was not completed, would be deemed to have revived and it is open for the respondents to continue the said enquiry.

The writ petition is accordingly disposed of. No order as to costs.

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RAMESH RANGANATHAN, J

Dated:30-09-2005

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